

MINUTES
UTAH
PHYSICIANS LICENSING
BOARD MEETING

October 8, 2008

Room 474 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111

CONVENED: 9:05 A.M.

ADJOURNED: 12:12 P.M.

Bureau Manager:
Board Secretary:
Division Compliance Specialist:

Noel Taxin
Karen McCall
Debbie Harry

Board Members Present:

Marc E. Babitz, MD, Chairperson
Lori G. Buhler, Public Member
Elizabeth F. Howell, MD
Stephen E. Lamb, MD
George C. Pingree, MD
Kristen Ries, MD
John W. Bennion, Ph.D.

Board Members Absent:

James H. Pingree, MD
Richard J. Sperry, MD
Daniel J. Parker, MD

DOPL Staff Present:

David Stanley, Division Director
Wayne Holman, Chief Investigator

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

MINUTES:

The minutes from the September 10, 2008 Board meeting were read.

Dr. Fowler made a motion to approve the minutes with a minor revision. Dr. George Pingree seconded the motion. **The Board vote was unanimous.**

The minutes from the September 24, 2008 Opt-Out meeting were read.

Dr. George Pingree made a motion to approve the minutes as read. Dr. Ries seconded the motion.

Dr. Babitz, Ms. Buhler, Dr. Howell, Dr. George Pingree, Dr. Bennion and Dr. Ries voted in favor of the motion. Dr. Lamb abstained from voting as he was absent from the meeting.

Ms. Taxin informed the Board that the Osteopathic Physicians will be meeting on October 9, 2008 to review the minutes. She stated that when both Boards have approved them, the minutes will be posted on the website with the Nursing Board minutes. She stated that all recommendations were given to Francine Giani, Department Director, to review and forward to the Governor's office.

APPOINTMENTS:

9:20 am

Debbie Harry , Compliance Update

Ms. Harry updated the Board regarding the compliance or non-compliance of probationers.

Ms. Harry reported that **Dr. Edmund Chein** is currently out of compliance with his Stipulation and Order.

She stated that there is no record of Dr. Chein completing an ethics course or a psychological evaluation as required. Ms. Harry stated that Dr. Chein also allowed his Utah license to expire while on probation.

Ms. Taxin corrected Ms. Harry and stated that Dr. Chein has completed the required prescribing practice course and the medical records course. She stated that Dr. Chein has never met with the Board and should be meeting regularly. Ms. Taxin stated that Dr. Chein called to let her know that he could not meet today as he would be in the Orient. She stated that Ms. McCall took the call and informed Dr. Chein that he would be out of compliance if he does not meet with the Board. She stated that he then agreed to call from the Orient for his appointment. Ms. Taxin stated that Dr. Chein will call one of her staff who will transfer the

call to the board room.

Dr. Babitz commented that Dr. Chein does need to meet personally with the Board.

Ms. Harry reported that **Dr. Randal N. Ellsworth** is currently out of compliance with his Stipulation and Order. She stated that his therapy report has not been received for the last quarter and his PIR and 12 step documentation have not been received. She stated that he also notified the Division that he would be unable to meet today. Ms. Harry stated that she received a letter from Dr. Ellsworth stating that he meets with his therapist on October 15, 2008 and will submit the report after that appointment.

Ms. Taxin stated that Ms. Harry and Ms. McCall tried unsuccessfully several times to contact Dr. Ellsworth regarding a telephonic appointment. She stated that she then tried to call and reached him. Ms. Taxin stated that she informed Dr. Ellsworth that he is out of compliance as the therapist report, PIR documentation and 12 step documentation have not been received. Ms. Taxin stated that Dr. Ellsworth said he would send all the information except the therapist letter but also a letter of explanation. Ms. Taxin stated the information was received. Ms. Taxin stated that she talked with Dr. Ellsworth's therapist after his last appointment regarding the concerns and issues discussed during his appointment. She stated that the therapist agreed to work with Dr. Ellsworth on the issues and to encourage him to follow through with his probationary commitment.

Dr. Ries asked if the probationary time counts if the probationer is out of compliance.

Ms. Taxin responded that she believes a probationer should receive a warning first. Ms. Taxin stated that she has a 3 strike rule but each case needs to be looked at individually. She stated that the Board may recommend the time stop or they may recommend an Order to Show Cause based on continued non-compliance with a signed Stipulation and Order.

Dr. Lamb expressed the Board's frustration with Dr. Ellsworth's non-compliance. He suggested future Stipulations include language that consistent non-compliance will extend the time of the probation. He stated that Dr. Ellsworth has been adversarial and chooses to misunderstand by being passive/aggressive.

9:30 am

Dr. Edmund Chein, Telephonic Probationary Interview

Dr. Chein did not call for his appointment.

9:50 am, Dr. Chein has not yet called. Dr. Chein did not call the entire meeting which concluded at 12:12 pm.

The Board determined Dr. Chein is out of compliance with his Stipulation and Order based on his failure to call for his probationary interview.

Dr. Fowler made a motion that Dr. Chein must meet in person with the Board for the December 4, 2008 meeting or the January 8, 2009 meeting or an Order to Show Cause will be scheduled.

Dr. Ries seconded the motion.

The Board vote was unanimous.

9:50 am

Dr. Randal N. Ellsworth, Telephonic Probationary Interview

Dr. Ellsworth met for his telephonic probationary interview.

Dr. Bennion conducted the interview.

Dr. Bennion requested Dr. Ellsworth to update the Board since he last met.

Dr. Ellsworth responded that he is ill at this time and is today at the clinic with an IV. He asked if the Board received his letter regarding his therapy appointment on October 15 and the therapist report to be submitted after that appointment.

Dr. Bennion responded that the letter was received. He informed Dr. Ellsworth it is important for the

therapist reports, the PIR documentation and the 12 step documentation to be submitted for the Board to be prepared for his probationary interviews. He stated that Dr. Ellsworth is again out of compliance and has been several times due to the same reasons. Dr. Bennion informed Dr. Ellsworth that all his information is due at the Division by the end of the month prior to month in which he is to meet. He then asked if Dr. Ellsworth has attended any PIR or 12 step meetings.

Dr. Ellsworth responded that he has been at the St. George clinic for 2 weeks and has attended meetings there.

Dr. Bennion stated that at his last appointment Dr. Ellsworth expressed frustration in attending the PIR and 12 step meetings and had stated that he did not want to attend them. He stated that the Board recommended Dr. Ellsworth search out other meetings. Dr. Bennion asked if he had done that.

Dr. Ellsworth responded that he finds the cognitive thinking more useful with his therapist. He stated that he has been doing more research on the computer regarding other types of meeting that he might attend but has not found anything as yet.

Dr. Bennion asked if there were any questions the Board members would like to ask.

Dr. Babitz responded that the quarterly reports do not necessarily have to coincide with Dr. Ellsworth's therapy visits but they must be received by the Division on time or he will be consistently out of compliance. He stated that the Board does not want further non-compliance and he does not believe Dr. Ellsworth wants it either.

Dr. Ellsworth stated that he is making efforts and wants to be in compliance.

Dr. George Pingree asked if Dr. Ellsworth works only in the St. George area or if he is also practicing in the Provo area. Dr. Pingree stated

that it is important for Dr. Ellsworth to meet in person with the Board. He stated that the telephonic appointments are not acceptable. Dr. Bennion concluded by informing Dr. Ellsworth that his next appointment will be January 14, 2009.

Ms. Harry again reminded Dr. Ellsworth that all information must be received by December 31, 2008 at the latest.

Ms. Taxin reminded Dr. Ellsworth that 2 reports and PIR cards for 6 months will need to be submitted for the January 14, 2009 appointment.

Ms. Harry stated that he may submit the reports and cards that were due for today's meeting now and then he would only need to submit one report and the cards for the next 3 months.

The Board determined Dr. Ellsworth is out of compliance with his Stipulation and Order based on his failure to submit the required therapy report.

An appointment was made for Dr. Ellsworth to meet in person on January 14, 2009.

10:10 am

Yearly Board Member Training

Ms. Taxin suggested the training be deferred until Dr. Parker is in attendance. She reminded the Board that she conducted the training last year and believed it would be good for Dr. Parker to receive the information. Ms. Taxin asked if any Board members had questions regarding the training.

Board members agreed that the training should be deferred until Dr. Parker is in attendance.

1:00 pm

Dr. Goates Hearing

Ms. Taxin informed the Board that she was notified yesterday that the Hearing might be cancelled as Dr. Goates was considering settling on an agreement. She stated that she believes Dr. Goates new legal council encouraged him to sign the agreement. Ms. Taxin read the agreement to the Board.

Board members agreed with Ms. Taxin regarding the requirements that were included in the agreement.

DISCUSSION ITEMS:

FYI

Ms. Taxin informed the Board that APA Legislation is including prescriptive practice for Psychologists if they complete additional courses.

Dr. Howell voiced concern that no one with medical training would be monitoring the Psychologists.

Ms. Taxin commented that this issue was discussed in the Utah Psychology Board meeting when Ms. Buhler was on the Board. She stated that Ms. Buhler voted against allowing Psychologists to complete all experience prior to graduating. She stated that it is concerning that a new graduate would be able to prescribe without any post graduate training.

Ms. Buhler commented that she believes that anyone with prescriptive practice needs to have the post graduate training.

Board members agreed.

Review Sample MOU/Stipulation and Order

Ms. Taxin asked the Board to review the sample MOU/Stipulation and Order.

Dr. Lamb requested that in the requirement for a psychological evaluation to include the requirement of a cognitive evaluation. He stated that the Board sometimes questions a probationer's ability to process information.

Dr. Howell suggested the language be "complete a neuropsychological battery" as that would include the cognitive evaluation. She stated that she will contact Ms. Taxin with the specific terminology. She stated that the evaluation should address the concerns of processing time, thinking and how well the brain is functioning.

Dr. Lamb commented that many of the probationers are out of compliance much of their probationary period. He asked if language could

be included to reflect that if the probationer is out of compliance a specific period of time then their probation will be extended that length of time. He stated that he would like for the Board to be able to recommend an extension when a probationer is on a 5 year probation, has been out of compliance for 4 years and then comes into compliance.

Ms. Taxin responded that she will talk with the AG to see if she could include language to allow the Board to extend the probationary period.

Dr. Babitz asked why areas read Division and Board as the Board is advisory and has no authority.

Ms. Taxin responded that she uses Division and Board for clarification as some probationers say they don't have to meet and talk with the Board as the Stipulation and Order/MOU says the Division, or vice versa.

Dr. Howell voiced concerns regarding probationers who are in recovery and are taking inappropriate prescriptions. She recommended probationers Physicians write a letter once a year to report the medication the probationer is taking and to justify why they are taking the specific medications. She stated that she also believes probationers should only see their primary physician with all prescriptions written only by the physician and not see an APRN or a Physician Assistant. She suggested in Stipulation and Order include language requiring the prescribing physician to read the Stipulation and Order/MOU and writing a letter to acknowledge they have read and understand the document. Dr. Howell stated that she does not believe probationers submit appropriate notification when they have a health issue such as seeing a Dentist for the pulling of teeth and need a specific medication.

Ms. Taxin responded that the probationers are to contact Ms. Harry to report all medications.

Dr. Howell suggested Ms. Harry report that Ms. X or Dr. X called to report they received 3 days of a

specific medication due to dental work. She stated that the Board would be able to avoid some issues that have come before the Board if a comprehensive evaluation was required. She stated that the evaluation should include specific components and should be completed within 45 days.

Ms. Taxin stated that the licensee sometimes says they can't afford a comprehensive evaluation and their legal counsel will plead for leniency and some areas are negotiated or it goes to a hearing.

Ms. Taxin thanked the Board for their input and stated that she will try to make future Stipulation and Orders/MOU's more appropriate.

Review USMLE and SPEX Information

Ms. Taxin reminded the Board that she mentioned at the last meeting that she received short video tapes regarding the USMLE and SPEX. She stated that Dr. James Pingree and other Board members requested these tapes be viewed at this meeting.

The Board watched the tapes and stated that they helped their understanding of the examinations.

Update/Commitment for November 24 & 25, 2008, Layfe Anthony Hearing

Ms. Taxin stated that she understands that it is difficult for Physicians to be away from their employment for 2 consecutive days. She stated that the AG's office is also trying to coordinate the attorney, the defendant, witnesses and the Judge. Ms. Taxin stated that we will need 6 Board members to commit to the 2 days.

Dr. Howell asked if it would be possible to break up the days and meet the 24th and then come back another day later to complete the hearing.

Ms. Taxin responded that her idea might be a possibility.

Following additional discussion, the Board requested Ms. Taxin to ask for 2 separate days and notify them of the decision.

FYI – 2009 Board Meeting Schedule

The Board noted the following dates for the 2009 Board meeting schedule: Wednesdays, January 14,

February 11, March 11, April 8, May 13, June 10, July 8, August 12, September 9, October 14, November 4 and December 9, 2009.

CORRESPONDENCE:

FSMB Correspondence

The Board reviewed the following FSMB correspondence:

1. FSMB Committee Appointment Recommendations.

Dr. Babitz requested anyone interested in being appointed or making a recommendation to contact Ms. Taxin.

Dr. Lamb

Dr. Lamb requested discussion at the next Board meeting regarding appointing a Board member as chairperson elect to fill in for Dr. Babitz when he is absent and to be the next chairperson.

Dr. Babitz requested Ms. Taxin to prepare the Board list with the expiration dates to assist with the chairperson elect discussion at the next Board meeting.

NEXT MEETING SCHEDULED FOR:

November 12, 2008

ADJOURN:

The time is 12:12 pm and the Board meeting is adjourned.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

November 12, 2008
Date Approved

(ss) Richard J. Sperry, MD
Acting Chairperson, Utah Physicians Licensing Board

October 21, 2008
Date Approved

(ss) Noel Taxin
Bureau Manager, Division of Occupational & Professional Licensing